



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, OLC, and FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application Dispute Resolution.

The Tenant stated that on November 14, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Respondent, via registered mail. The Agent for the Landlord acknowledged that these documents were received by the Landlord.

On June 01, 2015 the Landlord submitted several documents to the Residential Tenancy Branch. The Agent for the Landlord stated that none of these documents were served to the Tenant. As none of the documents were served to the Tenant, they were not accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Preliminary Matter

The Agent for the Landlord stated that the tenancy agreement signed by the Tenant identifies the Landlord as a business and that both he, and the Respondent, are agents for that business. The Tenant does not recall who was named as a Landlord on the tenancy agreement she signed.

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the name of the Landlord, as provided by the Agent for the Landlord at the hearing. That name appears on this decision.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Tenant stated that she agreed to pay a security deposit of \$635.00; that she gave an agent for the Landlord \$640.00 in cash; that the agent for the Landlord did not have change to return the excess \$5.00 to her.

The Agent for the Landlord stated that the Landlord received a security deposit of \$635.00 on April 01, 2013.

The Landlord and the Tenant agree:

- that this tenancy ended on September 30, 2014;
- that the tenant provided a forwarding address, in writing, on September 30, 2014, by writing it on the condition inspection report;
- that the Tenant did not authorize the Landlord to retain the security deposit; and
- that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Landlord stated that:

- on October 14, 2014 the Landlord mailed a security deposit refund, in the amount of \$635.00, to the forwarding address provided by the Tenant;
- that on November 07, 2014 the Tenant spoke with his wife and informed her that the security deposit refund had not been received;
- his wife told the Tenant a refund had been mailed and she asked the Tenant to wait a few days to see if it arrived;
- the Landlord subsequently confirmed the refund cheque had not been cashed;
- the Landlord cancelled the original refund cheque;
- the original refund cheque has never been returned to the Landlord by Canada Post; and
- the Landlord provided the Tennant with a duplicate refund cheque on November 14, 2014.

The Tenant stated that:

- she did not receive the security deposit refund that was allegedly sent on October 14, 2014;
- sometime around the end of October of 2014 or the beginning of November of 2014 she contacted the building manager and told him she had not received the refund;
- a day or so after contacting the building manager he contacted the Tenant, at which time she believes he told her that a refund had been mailed, although she is not certain;

- she spoke with the Landlord's wife on two occasions in late October or early November of 2014, who told her the security deposit would be refunded if the Tenant did not receive the refund that had been mailed to her;
- on November 14, 2014 her boyfriend picked up a cheque for \$635.00 from the Landlord;
- she has never received the cheque the Landlord allegedly mailed on October 14, 2014.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant paid the \$635.00 security deposit she was obligated to pay. I find that the Tenant has submitted insufficient evidence to corroborate her testimony that she paid an additional \$5.00 or to refute the Landlord's testimony that an additional \$5.00 was not paid.

I find, on the balance of probabilities, that the Landlord mailed a security deposit refund of \$635.00 to the forwarding address provided by the Tenant on October 14, 2014. This decision was based, in part, on the testimony of the Agent for the Landlord, which I found to be consistent, forthright, and credible. This decision was also based, in part, on the Tenant's testimony that in October or November of 2014 two agents for the Landlord told her that the refund had been mailed. I find the Tenant's testimony corroborates the Agent for the Landlord's testimony that the refund was mailed.

I find it entirely possible that the Agent for the Landlord was being truthful when he stated that the cheque was mailed on October 14, 2014 and that the Tenant was being truthful when she stated that the cheques was not received. I based this conclusion on the fact that Canada Post does occasionally lose or incorrectly deliver mail.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. As I have determined that a security deposit refund was mailed on October 14, 2014, I find that the Landlord repaid the security deposit on that date, thereby complying with section 38(1) of the *Act*. I specifically note that the *Act* does not stipulate that the Tenant must receive the refund within fifteen days.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did comply with section 38(1) of the *Act*, I dismiss the Tenant's application for double the security deposit.

On the basis of the undisputed evidence, I find that the security deposit was refunded to the Tenant on November 14, 2014. As the deposit has been refunded, in full, I dismiss the Tenant's claim for the return of the security deposit.

As I have found that the Landlord did not breach the *Act* in regards to the return of the security deposit, I find that the Landlord is not obligated to reimburse the Tenant for the cost of filing this Application for Dispute Resolution. I therefore dismiss the Tenant's application to recover the filing fee.

In determining that the Tenant is not entitled to recover the filing fee I was influenced, in part, by the undisputed evidence that the Tenant had been told the original refund had been mailed to her and that it would be replaced if it was not located. In my view, the Tenant should have exercised more patience before proceeding with this Application for Dispute Resolution.

### Conclusion

The Tenant's Application for Dispute Resolution is dismissed in its entirety.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 09, 2015

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Residential Tenancy Branch

